

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE (WILMINGTON)**

LOCAL UNION NO. 313 OF : CIVIL ACTION
THE INTERNATIONAL BROTHERHOOD : NO:
OF ELECTRICAL WORKERS OF WILMINGTON, :
DELWARE HEALTH AND WELFARE FUND :
c/o GEM GROUP :
650 Naamans Road, Suite 303 :
Claymont, DE 19703 :
and :
.

LOCAL UNION NO. 313 OF :
THE INTERNATIONAL BROTHERHOOD :
OF ELECTRICAL WORKERS OF WILMINGTON, :
DELWARE PENSION FUND :
c/o GEM GROUP :
650 Naamans Road, Suite 303 :
Claymont, DE 19703 :
.

and :
.

INTERNATIONAL BROTHERHOOD :
OF ELECTRICAL WORKERS LOCAL UNION :
NO. 313 DEFERRED INCOME PLAN :
c/o GEM GROUP :
650 Naamans Road, Suite 303 :
Claymont, DE 19703 :
.

Plaintiffs, :
.

v. :
.

RGS ELECTRICAL, INC. :
895 B. Nottingham Road :
Elkton, MD 21921 :
.

Defendant. :
.

COMPLAINT

Plaintiffs, by undersigned counsel, complain about Defendant as follows:

JURISDICTION

1. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. §§185(a), 1132, 1145.

2. A copy of this Complaint has been served on the Secretary of Labor and the Secretary of Treasury of the United States by certified mail.

VENUE

3. Venue lies in the District of Delaware under 29 U.S.C. §§185(a) or 1132(e)(2).

PARTIES

4. Plaintiffs, Local Union No. 313 of the International Brotherhood of Electrical Workers of Wilmington, Delaware Health and Welfare Fund, Local Union No. 313 of the International Brotherhood of Electrical Workers of Wilmington, Delaware Pension Fund and International Brotherhood of Electrical Workers Local Union No. 313 Deferred Income Plan, (“Welfare Fund”, “Pension Fund” and “DIP” and, jointly, “Funds”), are trust funds established under 29 U.S.C. §186(c)(5) and “multiemployer plans” and “employee benefit plans” within the meaning of 29 U.S.C. §1002(37), (1), (2) and (3).

5. Upon information and belief, Defendant, RGS Electrical Inc. (“Company” or “Defendant”) is a Maryland corporation and an employer in an industry affecting commerce within the meaning of 29 U.S.C. §§152(2), (6) and (7), 1002(5), (11) and (12) with a business office at the address listed in the caption.

COMMON FACTS

6. At all times relevant to this action, the Company was party to, or otherwise bound by, a collective bargaining agreement(s) with Local Union No. 313 of the International Brotherhood of Electrical Workers (singly or jointly, “Labor Contract”).

7. The Company also signed or agreed to abide by the terms of the Trust

Agreements of the Funds, as from time to time amended (jointly referred to as "Trust Agreements"), made between certain employers and employee representatives in an industry(ies) affecting commerce to promote stable and peaceful labor relations.

8. Under the Labor Contract or Trust Agreements, the Company agreed:

- (a) To make full and timely payments on a monthly basis to the Funds as required by the Labor Contracts;
- (b) To file monthly remittance reports with the Funds detailing all employees or work for which contributions were required under the Labor Contract;
- (c) To produce, upon request by the Funds individually or jointly, all books and records deemed necessary to conduct an audit of their records concerning their obligations to the Funds; and
- (d) To pay liquidated damages and all costs of litigation, including attorneys' fees, expended by the Funds to collect any amounts due as a consequence of the Company's failure to comply with its contractual obligations described in Subparagraphs (a), (b) and (c).

COUNT I - CONTRIBUTIONS UNDER CONTRACT

FUNDS

v.

COMPANY

9. The allegations of Paragraphs 1 through 8 are incorporated by reference as if fully restated.

10. Based upon information presently available to the Funds, the Company owes the Funds at least the sum of \$64,235.24 due under the Labor Contract or Trust Agreements for the period November 2006 through October 2007.

11. The Company has not paid the Funds as required by the Labor Contract or Trust Agreements.

WHEREFORE, the Plaintiffs ask that the Court:

(1) Enter judgment against the Company in favor of the Funds for at least \$ 64,235.24 plus all additional amounts found to be due and owing during the pendency of this litigation together with liquidated damages, interest and costs, including reasonable attorneys' fees incurred in this action or the collection or enforcement of any judgment, as provided in the Labor Contract or Trust Agreements.

(2) Grant such other or further relief, legal or equitable, as may be just, necessary or appropriate.

COUNT II - CONTRIBUTIONS UNDER ERISA

FUNDS

v.

COMPANY

12. The allegations of Paragraphs 1 through 11 are incorporated by reference as if fully restated.

13. Based upon information presently available to the Funds, the Company has failed to pay contributions, liquidated damages and interest on untimely paid contributions to the Funds in at least the amount of \$ 64,235.24 for the period November 2007 through October 2007 in violation of 29 U.S.C. §1145.

14. The Funds have been damaged by the Company's violation of 29 U.S.C. §1145.

WHEREFORE, Plaintiffs ask that the Court:

(1) Enter judgment against the Company in favor of the Funds for at least \$ 64,235.24

plus any additional amounts which are found to be due and owing during the pendency of this litigation, together with interest at the rate prescribed by 26 U.S.C. §6621, liquidated damages equal to the greater of the interest on the unpaid contributions or liquidated damages provided by the documents governing the Funds or statute and reasonable attorneys' fees and costs incurred in this action or the collection or enforcement of any judgment.

(2) Grant such other or further relief, legal or equitable, as may be just, necessary or appropriate.

COUNT III - AUDIT

FUNDS

v.

COMPANY

15. The allegations of Paragraphs 1 through 14 are incorporated by reference as if fully restated.

16. The Company is obligated to permit the Funds to audit its records and to cooperate in determining the contributions due the Funds.

17. The amount of contributions and work dues the Company is required to pay to the Funds is based upon hours worked and wages paid to employees performing work covered by the Labor Contract.

18. The Funds are without sufficient information or knowledge to plead the precise nature, extent and amount of the Company's delinquency since the books, records and information necessary to determine this liability are in the exclusive possession, custody and control or knowledge of the Company.

19. Computation of the precise amount of an employer's delinquency is normally

achieved by an audit of the employer's books and records and/or calculated from contractually-required remittance reports submitted by the employer.

20. No audit of the Company's books and records has been performed.

21. The Company is required by the Labor Contract, Trust Agreement or applicable law to permit the Funds to audit their records and to cooperate in determining the contributions due the Funds.

22. The Funds have no adequate remedy at law for the calculation of any damages suffered as a result of the breach itself requires an audit.

23. All conditions precedent to equitable relief have been satisfied.

WHEREFORE, Plaintiffs ask that the Court:

(1) Enjoin the Company, its officers, agents, servants, employees, attorneys and all others in active concert or participation with them to permit an audit of all records under the actual or constructive control of the Company and, in the absence of records, to cooperate in alternative methods for the determination of work for which contributions are due.

(2) Grant such other or further relief, legal or equitable, as may be just, necessary or appropriate.

COUNT IV - CONTRIBUTIONS UNDER CONTRACT AFTER AUDIT

FUNDS

v.

COMPANY

24. The allegations of Paragraphs 1 through 23 are incorporated by reference as if fully restated.

25. On information and belief, the Company has failed to make contributions to the

Funds as required by the Labor Contract or Trust Agreements in a period not barred by any applicable statute of limitations or similar bar.

26. On information and belief, the Funds have been damaged by the Company's failure to make contributions as required by the Labor Contract or Trust Agreements.

WHEREFORE, Plaintiffs ask that the Court:

(1) After an audit, enter judgment against the Company in favor of the Funds individually for the amount of contributions found due and owing by an audit together with liquidated damages, interest and costs, including reasonable attorneys' fees incurred in this action or the collection and enforcement of any judgment, as provided in the Labor Contract or Trust Agreements.

(2) Grant such other or further relief, legal or equitable, as may be just, necessary or appropriate.

COUNT V - CONTRIBUTIONS UNDER ERISA AFTER AUDIT

FUNDS

v.

COMPANY

27. The allegations of Paragraph 1 through 26 are incorporated by reference as if fully restated.

28. On information and belief, the Company has failed to make contributions to the Funds in violation of 29 U.S.C. §1145 in a period not barred by an applicable statute of limitations or similar bar.

29. The Funds are without sufficient information or knowledge to plead the precise nature, extent and amount of the Company's delinquency since the books, records and

information necessary to determine this liability are in the Company's possession, custody, control or knowledge.

30. On information and belief, the Funds have been damaged by the Company's violation of 29 U.S.C. §1145.

WHEREFORE, Plaintiffs ask that the Court:

(1) After an audit, enter judgment against the Company in favor of the Funds individually for the contributions found due and owing by the audit, together with interest at the rate prescribed by 26 U.S.C. §6621 from the due date for payment until the date of actual payment, liquidated damages equal to the greater of the interest on the unpaid contributions or liquidated damages provided by the plan document or statute and reasonable attorneys' fees and costs incurred in this action and in connection with any proceeding to enforce or collect any judgment.

(2) Grant such other or further relief, legal or equitable, as may be just, necessary or appropriate.

COUNT VI – INJUNCTION

FUNDS

v.

COMPANY

31. The allegations of Paragraphs 1 through 30 are incorporated by reference as if fully restated.

32. A money judgment or other remedy available at law is inadequate because the Company has shown its disregard of its contractual and legal obligations by a consistent pattern of delinquencies or late payment of contributions.

33. Unless ordered to do otherwise by this Court, Company will continue to refuse to submit remittance reports and/or pay the contributions presently due and owing or which become due and owing in the future, and the Funds and their participants will suffer immediate, continuing and irreparable damage by, among other matters, the loss of investment earnings, the inability to properly determine eligibility and calculate benefits, and a substantial increase in the administrative costs of the Funds with a diminution of the assets otherwise available to pay benefits to Company's employees and employees of other employers who fully and timely pay their contributory obligations.

34. All other conditions precedent to equitable relief have been satisfied.

WHEREFORE, Plaintiffs ask that the Court:

(1) Permanently restrain and enjoin the Company, its officers, agents, servants, employees, attorneys and all others in active concert or participation with them from continuing to violate the terms of the current collective bargaining agreement(s) between the Company and Local Union No. 313 of the International Brotherhood of Electrical Workers (including its affiliated locals) and from violating such other collective bargaining agreements as may from time to time be entered by the said parties providing for the timely filing of remittance reports with complete, accurate and proper information and timely payment of contributions to the Funds for so long as the Company is contractually-required to do so.

(2) Grant such other or further relief, legal or equitable, as may be just, necessary or appropriate.

Respectfully submitted,

By: /s/Rick S. Miller
RICK S. MILLER (#3418)
Ferry, Joseph & Pearce, P.A.
824 Market Street, Suite 904
P.O. Box 1351
Wilmington, DE 19899-1351
(302) 575-1555
Attorney for the Plaintiffs

Date: November 26, 2007

OF COUNSEL:

ELIZABETH A. COLEMAN
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Philadelphia, PA 19106
(215) 351-0644
ecoleman@jslex.com

(REV. 07/89)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS OF THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS		DEFENDANT					
Local Union No. 313 of the International Brotherhood of Electrical Workers of Wilmington, Delaware Health and Welfare Fund Local Union No. 313 of the International Brotherhood of Electrical Workers of Wilmington, Delaware Pension Fund International Brotherhood of Electrical Workers Local Union No. 313 Deferred Income Plan		RGS Electrical, Inc., a Maryland corporation					
b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>N/A</u> (EXCEPT IN U.S. PLAINTIFF CASES)							
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)		ATTORNEYS (IF KNOWN)					
Rick S. Miller (#3418) FERRY JOSEPH & PEARCE, P.A. 824 Market Street, Suite 904 P.O. Box 1351 Wilmington, DE 19899-1351 (302)575-1555							
II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)		III. CITIZENSHIP OF PRINCIPAL PARTIES					
<input checked="" type="checkbox"/> 1 U.S. Government <input type="checkbox"/> 3 Federal Question <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicated Citizenship of Parties in Item III)		N/A					
IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTION STATUES UNLESS DIVERSITY)							
29 USC §1002 et seq.; Amounts Due under ERISA and Contract Law							
V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)							
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY			
<input checked="" type="checkbox"/> 9 110 Insurance <input checked="" type="checkbox"/> 9 120 Manne <input checked="" type="checkbox"/> 9 130 Miller Act <input checked="" type="checkbox"/> 9 140 Negotiable Instrument <input checked="" type="checkbox"/> 9 150 Recovery of Overpayment & Enforcement of Judgment <input checked="" type="checkbox"/> 9 151 Midicare Act <input checked="" type="checkbox"/> 9 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input checked="" type="checkbox"/> 9 160 Stockholders Suits <input checked="" type="checkbox"/> 9 190 Other Contract <input checked="" type="checkbox"/> 9 195 Contract Product Liability	PERSONAL INJURY <input checked="" type="checkbox"/> 9 310 Airplane <input checked="" type="checkbox"/> 9 315 Airplane Product Liability <input checked="" type="checkbox"/> 9 320 Assault, Libel & Slander <input checked="" type="checkbox"/> 9 330 Federal Employers' Liability <input checked="" type="checkbox"/> 9 340 Manne <input checked="" type="checkbox"/> 9 345 Manne Product Liability <input checked="" type="checkbox"/> 9 350 Motor Vehicle <input checked="" type="checkbox"/> 9 355 Motor Vehicle Product Liability	PERSONAL INJURY <input checked="" type="checkbox"/> 9 362 Personal Injury-- Med Malpractice <input checked="" type="checkbox"/> 9 365 Personal Injury -- Product Liability <input checked="" type="checkbox"/> 9 368 Asbestos Personal Injury Product Liability <input checked="" type="checkbox"/> 9 370 Other Fraud <input checked="" type="checkbox"/> 9 371 Truth in Lending <input checked="" type="checkbox"/> 9 380 Other Personal Property Damage <input checked="" type="checkbox"/> 9 385 Property Damage Liability	<input checked="" type="checkbox"/> 9 610 Agriculture <input checked="" type="checkbox"/> 9 620 Other Food & Drug <input checked="" type="checkbox"/> 9 625 Drug Related Seizure of Property 21 USC 881 <input checked="" type="checkbox"/> 9 630 Liquor Laws <input checked="" type="checkbox"/> 9 640 R.R. & Truck <input checked="" type="checkbox"/> 9 650 Airline Regs <input checked="" type="checkbox"/> 9 660 Occupational Safety/Health <input checked="" type="checkbox"/> 9 690 Other	<input checked="" type="checkbox"/> 9 422 Appeal <input checked="" type="checkbox"/> 28 USC 158 <input checked="" type="checkbox"/> 9 423 Withdrawal <input checked="" type="checkbox"/> 28 USC 157	<input checked="" type="checkbox"/> 9 422 State Reapportionment <input checked="" type="checkbox"/> 9 410 Antitrust <input checked="" type="checkbox"/> 9 430 Banks and Banking <input checked="" type="checkbox"/> 9 450 Commerce/ICC Rates/etc. <input checked="" type="checkbox"/> 9 460 Deportation		
				PROPERTY RIGHTS			
					<input checked="" type="checkbox"/> 9 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 9 840 Trademark		
				LABOR	SOCIAL SECURITY		
					<input checked="" type="checkbox"/> 9 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 9 720 Labor/Mgmt. Relations <input checked="" type="checkbox"/> 9 730 Labor/Mgmt. Reporting & Disclosure Act <input checked="" type="checkbox"/> 9 740 Railway Labor Act <input checked="" type="checkbox"/> 9 790 Other Labor Litigation	<input checked="" type="checkbox"/> 9 861 HIA (1395ff) <input checked="" type="checkbox"/> 9 862 Black Lung (923) <input checked="" type="checkbox"/> 9 863 DIWC/DIVWW (405(g)) <input checked="" type="checkbox"/> 9 863 SSID Title XVI <input checked="" type="checkbox"/> 9 865 RSI (405(g))	<input checked="" type="checkbox"/> 9 875 Customer Challenge <input checked="" type="checkbox"/> 12 USC 3410 <input checked="" type="checkbox"/> 9 891 Agricultural Acts <input checked="" type="checkbox"/> 9 892 Economic Stabilization <input checked="" type="checkbox"/> 9 893 Environmental Matters <input checked="" type="checkbox"/> 9 894 Energy Allocation Act <input checked="" type="checkbox"/> 9 895 Freedom of Information Act <input checked="" type="checkbox"/> 9 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 9 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 9 Other Statutory Actions
				FEDERAL TAX SUITS			
					<input checked="" type="checkbox"/> 9 870 Taxes (U.S. Plaintiff or Defendant) <input checked="" type="checkbox"/> 9 871 IRS -- Third Party 26 USC 7609		
VI. ORIGIN			(PLACE AN X IN ONE BOX ONLY)				
<input checked="" type="checkbox"/> X 1 Original Proceeding <input checked="" type="checkbox"/> 9 2 Removed from State Court <input checked="" type="checkbox"/> 9 3 Remanded from Appellate Court <input checked="" type="checkbox"/> 9 4 Reinstated or Reopened			Transferred from <input checked="" type="checkbox"/> 9 5 another district (specify)	Appeal to District <input checked="" type="checkbox"/> 9 7 Judge from (specify)	Magistrate <input checked="" type="checkbox"/> 9 6 Multidistrict Litigation <input checked="" type="checkbox"/> 9 7 Judge from (specify)		
VII. REQUESTED IN		CHECK IF THIS IS A CLASS ACTION		DEMAND \$64,235.24			
COMPLAINT:		<input checked="" type="checkbox"/> 9 UNDER F.R.C.P 23		JURY DEMAND: <input checked="" type="checkbox"/> 9 YES <input type="checkbox"/> X NO			
VIII. RELATED CASE(S) (See instructions)							
IF ANY			N/A				
DATE November 26, 2007			SIGNATURE OF ATTORNEY OF RECORD /s/Rick S. Miller (#3418)				
UNITED STATES DISTRICT COURT							

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07-762

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

CLERK, U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2007 NOV 26 PM 4:24

I HEREBY ACKNOWLEDGE RECEIPT OF 4 COPIES OF AO FORM 85.

11/26/2007

(Date forms issued)

Mike Sanna

(Signature of Party or their Representative)

Mike Sanna

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action